the stockholders to creditors is ordinarily determined by the law of the domicile of the corporation, *Bell* v. *Farwell,* 176 Ill. 489, 52 N. E. 346, 42 L. R. A. 804, yet it is believed that the terms of the memorandum and articles of association of the defendant's corporation brought him within the scope of the language quoted above.

COVENANTS—PRIVITY OF ESTATE.—Where A acquired title to a piece of property by adverse possession against B, it was *held* that he could not claim rights under a covenant of warranty running to B because of a lack of privity of estate. *Deason* v. *Findley* (1906), — Ala. —, 40 So. Rep. 220.

While the doctrine that privity of estate was necessary to pass covenants running with the land was once open to question (Smith's Leading Cases, Eighth Ed., Vol. I, page 192; *Dickinson* v. *Hoomes,* 8 Grat. 406), it is now thoroughly established. *Brewer* v. *Marshall,* 18 N. J. Eq. 337; *Mygatt* v. *Coe,* 124 N. Y. 212, 26 N. E. 611, 11 L. R. A. 646; *Beardsley* v. *Knight,* 4 Vt. 471. In this latter case the court said, "It would be at least singular if he could acquire a title against H by a trespass and at the same time acquire a right to H's claim against the defendant on the covenants in his deed."

CRIMINAL LAW—FALSE PRETENSES—POSTPAYABLE CHECK.—The defendant and his co-conspirator obtained goods from the prosecuting witness for a check dated June 23 and expressly made payable June 26. The defendant's confederate drew the check and represented to the witness that it was good and of the value of $15, the sum it was drawn for. The check proved worthless. *Held,* that a postpayable check, as a mere promise to pay, cannot be the subject of false pretenses. *Brown* v. *State* (1906), — Ind. —, 76 N. E. Rep. 881.

The defendant seems to have been saved from conviction by resort to a technical rule that perhaps was erroneously applied. It is true that misrepresentation of a future event can be no false pretense. *Keller* v. *State,* 51 Ind. 111, 117. Still, while a false promise to pay will not alone be indictable as false pretenses, coupled with a false representation of an existing fact it will be. *State* v. *Montgomery,* 56 Ia. 195, 9 N. W. 120. In *Rex* v. *Parker,* 7 Car. & P. 825, a check drawn December 27, and payable January 6, was the subject of false pretenses which consisted in a representation by the prisoner and maker that the check was good and of the value indicated on its face. So where a prisoner represented that a postdated check made and offered by his confederate was good, and that the maker had a business, the court held him guilty of false pretenses. *Lesser* v. *People,* 73 N. Y. 78 (reported below, 12 Hun 668). In the latter case the court said that if no representations had been made the defense that the check was only a false promise would have been good. The worthlessness of the check would then have been but a breach of contract. The mere trick of post-dating the check, however, should not take away the criminal character of false representations by means of which a man's property is wrongfully taken.

CRIMINAL LAW—PRESUMPTION FROM IDENTITY OF NAMES.—John Smith was indicted for larceny. The state, under statute, sought to inflict a severer sentence on account of prior convictions of burglary. The records of two

prior convictions of one John Smith were recited in the indictment. The state offered no proof that the prisoner in the former convictions was the defendant in this prosecution, but relied on the presumption of identity of person arising from identity of names. *Held,* against one dissenting vote, that this presumption does not obtain for the present purpose against a person accused of crime, and that other proof of identity must be given. *State* v. *Smith* (1906), — Ia. —, 106 N. W. Rep. 187.

The rule that identity of names is prima facie evidence of identity of persons obtains generally in criminal proceedings as well as civil. *Garrett* v. *State,* 76 Ala. 18; *People* v. *Rolfe,* 61 Cal. 540. So where it is sought to discredit the prisoner as a witness by showing that he was once convicted of crime, the identity of his name and the name in the prior conviction is prima facie evidence of identity of person. *State* v. *McGuire,* 87 Mo. 642. But when former convictions are offered in order to aggravate the crime of which the prisoner then is charged, the presumption that the person is the same because the names are identical, does not obtain. *Com.* v. *Briggs et ux.,* 5 Pick. 428; *State* v. *Lashus,* 79 Me. 504. For no presumption shall be indulged against a person accused of crime. There is one case contra: *State* v. *Kelsoe,* 11 Mo. App. 91, where it is said that the unrebutted presumption is proof enough of the identity of person. Even so the present majority decision seems right for a reason not mentioned by the court—the commonness of the prisoner's name. The presumption of identity of person is rebutted by the common character of the name. *Garrett v. State,* supra; *Jones* v. *Jones,* 9 M. & W. 75.

DEEDS—CAPACITY OF GRANTOR AS COMPARED WITH THAT OF TESTATOR.—Where the plaintiff requested the court to instruct the jury that "It requires more mental capacity to execute a deed than a will," which the court refused, and the plaintiff took exceptions, it was *held* that the instruction suggested an abstract and collateral question not involved in the issues of the trial and therefore was correctely refused, but the court nevertheless discussed the proposition and was of the opinion that there was no good reason why a different standard of mental capacity should be established for deeds than wills. *Bond et al.* v. *Branning Mfg. Co.* (1906), — N. C. —, 52 S. E. Rep. 929.

While there is considerable authority for the court's view on the question of capacity (*Coleman* v. *Robertson Exrs.,* 17 Ala. 84; *Terry* v. *Buffington,* 11 Ga. 337, 56 Am. Dec. 423; *Davis* v. *Calvert,* 25 Am. Dec. 282), the weight of authority seems to be the other way. *Harrison* v. *Rowan,* Fed. Cases No. 6,141 (3 Wash. C. C. 580); *Aubert* v. *Aubert,* 6 La. Ann. 104; *Brinkman* v. *Rueggesick,* 71 Mo. 553; *Ring* v. *Lawless,* 190 Ill. 520, 60 N. E. 881; *Kerr* v. *Lunsford,* 31 W. Va. 659, 8 S. E. 493, 2 L. R. A. 668. This latter case holds explicitly that an instruction that it requires less capacity to make a will than it does to make a deed is correct. The reason given for this view is that when one makes a deed his mind is opposed by another mind, while the same is usually not the case with one who makes a will.